

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

JOHN CONSENTINO,  
Plaintiff,  
vs.  
R. CANDELARIA,  
Defendant.

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1:02-cv-06375-OWW-DLB-P

**FINDINGS AND RECOMMENDATIONS  
RE DISMISSAL OF ACTION**  
(Doc. 26)

Plaintiff, John Consentino ("plaintiff"), represented by counsel, is a state prisoner proceeding in this civil rights action pursuant to 42 U.S.C. § 1983.

On October 11, 2006, the court issued an order requiring plaintiff to file an opposition or a statement of non-opposition to defendants' motion for summary judgment within thirty (30) days from the date of service of that order. The thirty-day period has passed, and plaintiff has failed to comply with or otherwise respond to the court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all

sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the court must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

1 In the instant case, the court finds that the public's  
2 interest in expeditiously resolving this litigation and the court's  
3 interest in managing the docket weigh in favor of dismissal as this  
4 case has been pending since 2002. The third factor, risk of  
5 prejudice to defendants, also weighs in favor of dismissal, since a  
6 presumption of injury arises from the occurrence of unreasonable  
7 delay in prosecuting an action. Anderson v. Air West, 542 F.2d  
8 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor -- public policy  
9 favoring disposition of cases on their merits -- is greatly  
10 outweighed by the factors in favor of dismissal discussed herein.  
11 Finally, a court's warning to a party that his failure to obey the  
12 court's order will result in dismissal satisfies the "consideration  
13 of alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at  
14 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The  
15 court's order of October 11, 2006, expressly stated: "The failure  
16 to file an opposition or a statement of non-opposition in  
17 compliance with this order will result in a recommendation that  
18 this action be dismissed, without prejudice, for failure to obey a  
19 court order and failure to prosecute." Thus, plaintiff had  
20 adequate warning that dismissal would result from non-compliance  
21 with the court's order.

22 Accordingly, the court HEREBY RECOMMENDS that this action be  
23 DISMISSED, without prejudice, based on plaintiff's failure to obey  
24 the court's order of October 11, 2006, and failure to prosecute.

25 These Findings and Recommendations are submitted to the United  
26 States District Judge assigned to the case, pursuant to the  
27 provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days**  
28 after being served with these Findings and Recommendations,

1 plaintiff may file written objections with the court. Such a  
2 document should be captioned "Objections to Magistrate Judge's  
3 Findings and Recommendations." Plaintiff is advised that failure  
4 to file objections within the specified time may waive the right to  
5 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
6 (9th Cir. 1991).

7 IT IS SO ORDERED.

8 **Dated: November 30, 2006**  
9 3c0hj8

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE